

APPENDIX A: National Objectives and Eligibility

I. NATIONAL OBJECTIVES

A. GENERAL

The primary objective of the Housing and Community Development Act of 1974, as amended, is the development of viable urban communities by providing decent housing, a suitable living environment and expanding economic opportunity; principally for persons of low and moderate income. To be consistent with this primary objective, each activity must address one of the following objectives:

1. Benefit low and moderate income families and individuals; or,
2. Aid in the prevention or elimination of slums and blight

Local programs may also include activities designed to meet community development needs having a particular urgency.

The following criteria shall be used to determine whether a proposed activity complies with one or more of the national objectives.

B. ACTIVITIES BENEFITTING LOW AND MODERATE INCOME PERSONS

Activities meeting the criteria in this section, as applicable, will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct efforts of the assisted activity will be considered. The activities, when taken as a whole, must not benefit moderate income persons to the exclusion of low income persons.

1. Area Benefit Activities

An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. Units of general local government may use either HUD-provided data comparing census data with appropriate low and moderate income levels or survey data that is methodologically sound. (See Handbook for Methodology).

An activity that serves an area that is not primarily residential in character shall not qualify under this criteria.

2. Limited Clientele Activities

(i) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. The following kinds of activities may not qualify under this paragraph:

- (a) Activities, the benefits of which are available to all the residents of an area;
- (b) Activities involving the acquisition, construction or rehabilitation of property for housing; or
- (c) Activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs.

(ii) To qualify under this section, the activity must meet one of the following tests:

- (a) Benefit a clientele who are generally presumed to be principally low and moderate income persons. The following groups are presumed by HUD and CD to meet this criterion; abused children, battered spouses, elderly persons, handicapped persons, illiterate persons and migrant farm workers;
- (b) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit;
- (c) Have income eligibility requirements which limit the activity exclusively to low/moderate income persons; or
- (d) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(iii) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one dwelling unit.

3. Housing Activities

An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered, for this purpose, as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:

- (a) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; and
- (b) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and
- (c) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

4. Job Creation or Retention Activities

(i) An activity designed to create permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be made available to low and moderate income persons.

(ii) For an activity than retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: the jobs are known to be held by low or moderate income persons; or the jobs can reasonably be expected to turn over within the following two years and that they will be filled by, or that steps will be taken to ensure that they are made available to, low or moderate income persons upon turnover.

(iii) Jobs will be considered to be available to low and moderate income persons for these purposes only if:

- (a) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training;
- (b) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs; or
- (c) The employee resides in a census tract where not less than 70 percent of the residents are low and moderate income persons.
- (d) The assisted business is located within a census tract (or block numbering area) that meets the following requirements:

(1) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(2) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(3) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(a) All block groups in the census tract have poverty rates of at least 20 percent; and

(b) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent.

(iv) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(a) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by CDBG funds.

(b) Where CDBG funds are used to pay for the staff and overhead costs of a subrecipient specified in Section 105(a)(15) of the Act making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(c) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance

to businesses, this request may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during any one year period.

(d) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, providing that the cost (in CDBG funds) for the facility/improvement is less than \$10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(2) In any case where the cost per job to be created or retained is \$10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the public facility/improvement between the date the State awards the CDBG funds to the recipient and the date one year after the physical completion of the public facility/improvement. In addition, the assisted activity must comply with the public benefit standards.

5. Planning Only Activities

An activity involving planning (when such activity is the only activity for which the grant to the units of general local government is given, or if the planning activity is unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.

C. ACTIVITY WHICH AID IN THE PREVENTION OR ELIMINATION OF SLUMS OR BLIGHT

Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

1. Activities to Address Slums or Blight on an Area Basis

An activity will be considered to address prevention or elimination of slums or blight in an area if it can determine that:

- (i) The area, delineated by the unit of general local government, meets a definition of slum, blighted, deteriorated or deteriorating area under state or local law; (See Appendix C)
- (ii) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration;
- (iii) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken. The unit of general local government must develop minimum standards

for building qualifications which may take into account local conditions.

- (iv) The unit of general local government must keep records to document its finding that a project meets the national objective of prevention or elimination of slums and blight.

2. Activities to Address Slums or Blight on a Spot Basis

Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

3. Planning Only Activities

An activity involving planning (when the activity is the only activity for which the grant to the unit of general local government is given, or the planning activity is unrelated to any other activity assisted by the grant) if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the other criteria of elimination of slums or blight.

D. ACTIVITIES DESIGNED TO MEET COMMUNITY DEVELOPMENT NEEDS HAVING A PARTICULAR URGENCY

In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the unit of general local government certifies, and the state determines, that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the units of general local government is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government.

E. ADDITIONAL CRITERIA

1. In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the requirements of paragraph B(1), area benefit activities, of this section whether or not the requirements of paragraph B(4), job creation activities, of this section are met in order to qualify as benefiting low and moderate income persons.
2. Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under (4) below.
3. Where the assisted activity is relocation assistance that the unit of general local government is required to provide, the relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefitting low and moderate income persons.
4. Change of Use of Real Property

The standards described in this section apply to real property within the units of general local government's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (24 CFR 85.36, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments". The threshold

amount is currently \$100,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of general local government's grant.

(i) A unit of general local government may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the units of general local government provides affected citizens with reasonable notice of an opportunity to comment on any proposed change, and either:

(a) The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

(b) The requirements in paragraph (ii) of this section are met.

(ii) If the unit of general local government determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph 4(i) of this section, it may retain or dispose of the property for the changed use if the unit of general local government's CDBG program is reimbursed or the State's CDBG program is reimbursed, at the discretion of the State. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within 5 years of such closeout, the unit of general local government shall make the reimbursement to the State's CDBG program account.

(iii) Following the reimbursement of the CDBG program in accordance with (ii) above, the property will no longer be subject to any CDBG requirements.

5. Activities Serving Beneficiaries Outside the Jurisdiction of the Units of General Local Government

CDBG funded activities may serve beneficiaries outside the jurisdiction of the units of general local government that receives the grant, provided the unit of general local government determines that the activity is meeting its needs in accordance with its statement of Community Development Needs submitted as part of the application for assistance.

- (i) A majority of the beneficiaries of such activities may reside outside the boundaries of the locality that receives the grant provided that the receiving locality is willing to implement the activity and will be responsible for meeting statutory requirements.
- (ii) In instances where an activity carried out by a small city also benefits residents of an adjacent entitlement jurisdiction:
 - (a) A majority of the beneficiaries should reside in the small city; or
 - (b) If a substantial majority of beneficiaries reside in the entitlement jurisdiction, that jurisdiction should pay a proportional cost of the activity.

F. PLANNING AND ADMINISTRATIVE COSTS

CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

II. ELIGIBLE ACTIVITIES

Activities authorized for the Small Cities CDBG Grant under the Housing and Community Development Act of 1974, as amended, are eligible for funding under this program. Applicants, however, will be cautioned that each proposed activity must meet National Objectives as heretofore stated. This, combined with the State commitment of 70% benefit to low and moderate income families and individuals, will result in certain activities competing more favorably for funding.

A. Eligible Activities (Section 105a of the Act)

Activities assisted may include only:

1. Acquisition of real property (including air rights, water rights, and other interests therein) which is:
 - (i) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;
 - (ii) Appropriate for rehabilitation or conservation activities;
 - (iii) Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;
 - (iv) To be used for the provision of public works, facilities and improvements eligible for assistance under Title I of the Act; or
 - (v) to be used for other public purposes.
2. Public Facilities: The acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements.
3. Code Enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or service to be provided, may be expected to arrest the decline of the area.

4. Clearance, Demolition, Removal and Rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties, and including the renovation of closed school buildings.

5. Architectural Barrier Removal: Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons.

6. Losses of Rental Income: Payments to housing owners for losses of rental income incurred in holding for a temporary period housing units to be utilized for relocation of individuals and families displaced by activities under Title I.

7. Disposition (through sale, lease, donation or otherwise) of any real property acquired pursuant to this title or its retention for public purposes.

8. Provision of Public Services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such units, or received by such unit from the State) during any part of the twelve-month period immediately preceding the date of submission of the application and which are to be used for such services, unless the State finds that the discontinuation of such services was the result of event not within the control of the unit of general local government. Not more than 15 percent of the State's annual allocation under Title I including program income may be used for activities under this paragraph.

9. Payments of Non-Federal Share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under Title I.

10. Payment of the Cost of completing a project funded under Title I of the Housing Act of 1949.

11. Relocation Payments and assistance for displaced individuals, families, businesses, organization, and farm operations, when determined by the grantee to be appropriate.

12. Planning Activities: Activities necessary:

(i) To develop a comprehensive community development plan, and

(ii) To develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively:

- (a) Determine its needs,
- (b) Set long-term goals and short-term objectives,
- (c) Devise programs and activities to meet these goals and objectives,
- (d) Evaluate the progress of such programs in accomplishing these goals and objectives, and
- (e) Carry out management, coordination, and monitoring of activities necessary for effective planning implementation.

13. Administrative Costs: Payment of reasonable administrative costs related to establishing and administering federal approved enterprise zones (this activity is not effective until such time as a federal enterprise zone program is implemented). Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in Section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendment of 1981.

14. Provision of Assistance Including Loans/Grants: (both interim and long term) for activities which are carried out by public or private non-profit entitles, including:

(i) Acquisition of real property;

(ii) Acquisition, construction, reconstruction, rehabilitation, or installation of:

- (a) Public facilities (except for buildings for the general conduct of government), site improvements, and utilities;

- (b) Commercial or industrial buildings or structures and other commercial or industrial real property improvements; and

- (c) Planning.

15. Neighborhoods Based Non-Profits: Assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities of nonentitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the national objectives and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of the neighborhood revitalization or other community development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 3(b)(3) of the United State Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing.

16. Development of Energy Strategies related to recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as:

- (i) An analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements, budgeting, waste management, district heating and cooling, and use planning and zoning, and traffic control, parking and public transportation function; and

- (ii) A statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low and moderate income persons) to make energy conserving improvements to residential structures, and other proposed energy conservation activities.

17. Provisions of Assistance to Private, For-Profit Entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing business and jobs in the neighborhoods) that:

- (i) Creates or retains jobs for low and moderate income persons;
- (ii) Prevents or eliminates slums and blight;
- (iii) Meets urgent needs;
- (iv) Creates or retains businesses owned by community residents;
- (v) Assists businesses that provide goods or services needed by, and affordable to, low and moderate income residents;
- (vi) Provides technical assistance to promote any of the activities under subparagraphs (i) through (v);
- (vii) In any case in which an activity described in this paragraph (17) is provided assistance, such assistance shall not be limited to activities for which no other forms of assistance are available or could not be accomplished but for that assistance;

18. Section 17 Housing: The rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937.

19. Facilitate Substantial Reconstruction of Housing: Provision of assistance to facilitate substantial reconstruction of housing owner and occupied by low and moderate income persons:

- (i) Where the need for reconstruction was not determinable until after rehabilitation under this section had commenced, or
- (ii) Where the reconstruction is part of the neighborhood rehabilitation effort and the grantee:
 - (a) Determines the housing not suitable for rehabilitation, and

- (b) Demonstrates to the satisfaction of HUD that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction.

20. Capacity Building for Non-Profits: Provisions of technical assistance to public or nonprofit entitles to increase the capacity of such entitles to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considerate a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13).

21. Housing Services, such as housing counseling, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entitles, participating or seeking to participate in housing activities authorized under this section, or under Title II of the Cranston-Gonzalez National Affordable Housing, Act, except that activities under this paragraph shall be subject to any limitation on administrative expenses imposed by any law. (This will not be effective until a rule is issued.)

22. Institutions of Higher Education: Provision of assistance by recipients under this title to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities.

23. Micro-Enterprises: Provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entitles) to enable such entitles to facilitate economic development:

- (i) Providing credit (including providing direct loans and loan guarantees, establishing revolving loans funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;
- (ii) Providing technical assistance, advice, and business support services (including assistance, advice and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and

- (iii) Providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises.
- (iv) Training, technical assistance, and other support service costs provided to small businesses or microenterprises or to grantees and subgrantees to develop the capacity to provide assistance shall not be considered a planning or administrative costs. Such costs shall, if not counted against the planning and administrative limitation, be subject to national objective requirements.

24. Habitability of Tax Foreclosure Housing: Activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low and moderate income neighborhoods.

25. Direct Home Ownership Assistance: Provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service) by using such assistance to:

- (i) Subsidize interest rates and mortgage principal amount for low and moderate income homebuyers;
- (ii) Finance the acquisition by low and moderate income homebuyers of housing that is occupied by the homebuyers;
- (iii) Acquire guarantees for mortgage financing obtained by low and moderate income homebuyers from private lenders (except that amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);
- (iv) Provide up to 50 percent of any downpayment required from low or moderate income homebuyers; or
- (v) Pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low or moderate income homebuyer.

B. Ineligible Activities

1. General Rule: The general rule is that any activities not authorized under the provision of the Housing and Community Development Act of 1974 as amended (through October 28, 1992) are ineligible.

Maximum Feasible Deference: The State's Small Cities rule at 24 CFR 570.480 gives maximum feasible deference to the state's interpretation of the statutory and regulatory requirements, provided that the interpretations are not plainly inconsistent with the Act, and the intent of Congress.